



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0574, FRL-8814-01-R10]

Approval and Promulgation of Air Quality Implementation Plans; Washington; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Washington State Implementation Plan (SIP) pertaining to adoption by reference of a Low Emission Vehicle (LEV) program by the State of Washington. The Clean Air Act (CAA) grants authority to the EPA to adopt federal standards relating to the control of emissions from new motor vehicles, and generally preempts states from doing so. However, the CAA provides California the ability to adopt and enforce its own new motor vehicle emission standards, as long as the EPA approves California's standards via a preemption waiver. The CAA also allows other states to adopt California's new motor vehicle emission standards for which the EPA has granted such a waiver providing other relevant criteria are met. Washington adopted California's LEV emission standards in 2005, effective with new vehicles sold in model year 2009. Washington subsequently amended its new motor vehicle emissions program to incorporate California's LEV updates to its program. The purpose of this SIP revision is to implement programs to reduce vehicle emissions that contribute to formation of ground level ozone and fine particulate matter. Washington did not submit provisions related to greenhouse gas emissions from new motor vehicles or zero-emission vehicles requirements for inclusion in the SIP. The EPA is proposing to approve Washington's LEV SIP revision, as it relates to criteria pollutants, in accordance with the requirements of the CAA.

DATES: Comments must be received on or before [Insert date 30 days after date of

publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2019-0574 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-0256, or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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I. Background

A. What Action is the EPA Proposing?

The EPA is proposing to approve a SIP revision submitted by Washington on September 30, 2019 requesting inclusion of the state's adopted and implemented California LEV standards as part of the Washington SIP. None of Washington's LEV rules are currently in the SIP. Under section 177 of the CAA, states with plan provisions approved under CAA part D (such as attainment or maintenance plans for ozone and particulate matter described below) and other criteria in section 177 are met, may adopt California's standards in lieu of otherwise applicable federal new motor vehicle emission standards.

Washington's LEV rules are applicable to subject, new motor vehicles sold or titled in Washington beginning with model year 2009. Subject vehicles include passenger cars, light duty trucks, and medium duty passenger vehicles.¹ Washington first adopted California LEV standards as state regulation, Chapter 173-423 Washington Administrative Code (WAC), in 2005 effective with the sale and titling of new vehicles beginning in model year 2009. Washington did not submit a request to the EPA to incorporate the program as a SIP revision at the time. However, to strengthen the SIP particularly with respect to ozone control, Washington formally submitted the state's LEV program regulations to the EPA on September 30, 2019 for approval and inclusion in the SIP. Further detail on Washington's LEV program is provided in section I.E. of this preamble. We are proposing to approve Washington's SIP revision because it will update the SIP with the current Washington LEV rules, and because such LEV rules satisfy the criteria under section 177 of the CAA.

B. Washington's Air Quality with Respect to the Federal National Ambient Air Quality Standards for Ozone and Fine Particulate Matter

1. Washington Ozone Attainment Status

¹ Effective June 11, 2020, the Washington State Legislature modified the LEV program to include all medium duty vehicles beginning with model year 2025 and adopted California's zero emission vehicle standards. See Revised Code of Washington 70A.30.010. However, these recent statutory changes are not part of the 2019 rule package submitted for approval at this time.

The CAA, as amended in 1990, requires the EPA to set National Ambient Air Quality Standards (NAAQS) for ambient air pollutants considered harmful to public health and the environment. The EPA establishes NAAQS for six principal air pollutants, or “criteria” pollutants, which include: ozone, carbon monoxide, lead, nitrogen dioxide, particulate matter, and sulfur dioxide (SO₂). The CAA establishes two types of NAAQS. Primary standards provide public health protection, including protecting the health of sensitive populations such as asthmatics, children, and the elderly. Secondary standards protect public welfare, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. The CAA also requires the EPA to periodically review the standards to ensure that they provide adequate health and environmental protection, and to update those standards as necessary.

Ozone is formed in the atmosphere by photochemical reactions between ozone precursor pollutants, including volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA directs areas designated as nonattainment to apply controls on VOC and NO_x emission sources to reduce the formation of ozone.

On November 6, 1991 (56 FR 56694), the EPA designated the Portland-Vancouver area and the Seattle-Tacoma area as marginal nonattainment under the 1979 1-hour ozone NAAQS. For the 1-hour ozone NAAQS, attainment is defined when the expected number of days per calendar year, with maximum hourly average concentration greater than 0.12 parts per million (ppm) is equal to or less than 1. The EPA approved the state’s CAA section 175A maintenance plan for the Portland-Vancouver area and redesignated the area to attainment on May 19, 1997 (62 FR 27204). Similarly, the EPA approved the state’s CAA section 175A maintenance plan for the Seattle-Tacoma area and redesignated the area to attainment on September 26, 1996 (61 FR 50438). The EPA later revoked the 1-hour ozone NAAQS effective June 15, 2005 (70 FR 44470).

The EPA did not designate any nonattainment areas in Washington for subsequent

updates to the ozone NAAQS, specifically designations for the 1997 8-hour ozone NAAQS (84 FR 23857, April 30, 2004), the 2008 revision to the 8-hour ozone NAAQS (77 FR 30088, May 21, 2012), and the 2015 revision to the 8-hour ozone NAAQS (82 FR 54232, November 16, 2017). While there were no new ozone nonattainment areas designated in the state, Washington generally adopts pro-active measures to prevent nonattainment.

2. Washington Fine Particulate Matter Attainment Status

Fine particulate matter ($PM_{2.5}$) can be emitted directly or formed secondarily in the atmosphere. The main precursors of secondary $PM_{2.5}$ are SO_2 , NO_x , ammonia, and VOCs. Sulfates are a type of secondary particle formed from SO_2 emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO_x emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, the EPA promulgated the first air quality standards for $PM_{2.5}$ (62 FR 38652). The EPA promulgated primary and secondary annual standards at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated primary and secondary 24-hour standards of $65 \mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. All areas in Washington met the 1997 $PM_{2.5}$ standards, with all counties classified as unclassifiable/attainment.

On October 17, 2006 (71 FR 61144), the EPA revised the $PM_{2.5}$ NAAQS, retaining the annual average NAAQS at $15 \mu g/m^3$ but revising the 24-hour NAAQS to $35 \mu g/m^3$. On November 13, 2009 (74 FR 58688), the EPA designated the Tacoma area as nonattainment for the 24-hour $PM_{2.5}$ NAAQS. On February 10, 2015 (80 FR 7347), the EPA approved the CAA section 175A maintenance plan for the Tacoma area and redesignated the area to attainment. Attainment was achieved primarily through wood stove emission reduction measures. However, projected declines in mobile source precursor emissions from ongoing vehicle fleet turnover also played a role in demonstrating continued attainment of the NAAQS.

Lastly, on January 15, 2013, the EPA promulgated a revised primary annual PM_{2.5} NAAQS (78 FR 3086), strengthening the standard from 15 µg/m³ to 12 µg/m³. Nonattainment area designations for the 2012 primary annual PM_{2.5} standard were published on January 15, 2015 (80 FR 2206), with all counties in Washington classified as unclassifiable/attainment.

C. Federal Motor Vehicle Emission Standards

To reduce air pollution from motor vehicles, which contribute to higher levels of ambient air pollution such as ozone and PM_{2.5}, motor vehicles sold in the United States are required by the CAA to be certified to meet federal motor vehicle emission standards. States are generally prohibited from adopting vehicle standards, except for California, which was granted an exception by the CAA to continue to issue its own vehicle emission standards. Section 209 of the CAA requires that, among other criteria for a waiver of preemption, California must demonstrate to the EPA that its newly adopted standards will be in the aggregate, at least as protective of public health and welfare as applicable federal standards.

The CAA also authorizes other states to adopt California emission standards for which the EPA has granted California such a waiver of preemption. Under section 177 of the CAA, states with CAA part D attainment or maintenance plans are authorized to adopt California's standards in lieu of federal vehicle standards, provided they do so with at least two model years lead time prior to the effective date of the standards, and provided that the EPA has issued a waiver of preemption to California for such standards.

D. California LEV Program

In 1990, California's Air Resources Board (CARB) adopted LEV standards applicable to light and medium duty vehicles and phased in beginning with model year 1994 vehicles. In 1999, California adopted a second generation of LEV standards, known as LEV II, which were phased in beginning model year 2004. The EPA waived federal preemption for California's LEV II program on April 22, 2003 (68 FR 19811).

In 2012, California approved a new, more stringent LEV program called the Advanced

Clean Cars Program, or the LEV III program. California codified the LEV III requirements for criteria pollutant control in Title 13 of the California Code of Regulations, Division 3, section 1961.2. The program was phased in beginning with vehicles certified in model year 2015 and applied to light duty vehicles, light duty trucks, and medium duty passenger vehicles. On June 9, 2013 (78 FR 2112), the EPA granted a federal preemption waiver for California's Advanced Clean Cars Program.²

E. Washington LEV Program

In 2005, the Washington Legislature first adopted California's LEV program under Revised Code of Washington (RCW) 70A.30.010. Washington's adoption in 2005 applied to passenger cars, light duty trucks, and medium duty passenger vehicles, excluding other medium duty vehicles and California's ZEV requirements.³ The legislature directed the Washington Department of Ecology (Ecology) to develop regulations implementing the adoption of California's LEV program, which Ecology codified in Chapter 173-423 Washington Administrative Code (WAC). Chapter 173-423 WAC became effective December 31, 2005 and applied to all 2009 and subsequent model years.⁴ However, Washington did not submit the 2005 version of its LEV program regulations as a SIP revision request to EPA at that time. Ecology subsequently amended its LEV program regulations to incorporate by reference updates to the applicable California's LEV program requirements codified in California Code of Regulations Title 13, Division 3.⁵

II. Summary of the September 2019 Washington LEV SIP Revision

On September 30, 2019, Washington submitted a SIP revision requesting that the EPA amend the SIP to incorporate the state LEV requirements under Chapter 173-423 WAC.

² We note that California's LEV III requirements for greenhouse gas exhaust emission standards codified in sections 1961.1 and 1961.3 were not submitted for approval as part of Washington's adoption by reference of the California LEV rules, nor were provisions related to zero emission vehicles (ZEV).

³ Effective June 11, 2020, the Washington State Legislature modified the LEV program to include all medium duty vehicles beginning with model year 2025 and adopted California's zero emission vehicle standards. However, these recent statutory changes are not part of the 2019 rule package submitted for approval at this time.

⁴ See Washington State Register (WSR) 05-24-044 included in the docket for this action.

⁵ See WSR 09-03-077, 12-24-033, 16-12-099, and 19-02-056 included in the docket.

Washington's LEV program includes California's LEV III standards for criteria pollutant control, which Ecology first incorporated by reference on November 28, 2012, effective December 29, 2012.⁶ Under section 177 of the CAA, states with CAA Part D attainment or maintenance plans, such as Washington, may adopt California's standards in lieu of federal vehicle standards, provided they do so with at least two model years lead time prior to the effective date of the standards, and provided that the EPA has issued a waiver of preemption to California for such standards. As noted above, Washington adopted the California LEV standards in 2005 applying to model year 2009 vehicles, meeting the two-year lead time requirement under section 177 of the CAA. As discussed above, the California LEV II standards adopted by Washington in 2005 had already received an EPA federal preemption waiver in 2003. Therefore, Washington met all CAA section 177 requirements for initial adoption of the California LEV standards. Subsequent updates, such as adoption of California's LEV III, which also received a federal preemption waiver, also met the two-model year lead time requirement. Since the adoption of California's LEV III program in 2012, there have been no major changes to Washington's LEV program for criteria pollutants; however, Ecology has periodically updated the incorporation by reference in Chapter 173-423 WAC to maintain consistency with the California motor vehicle emission standards.

Washington submitted, and the EPA is proposing to approve and incorporate by reference into the SIP, Chapter 173-423 *Low Emission Vehicles* with one important caveat. Washington did not submit provisions related to California's greenhouse gas motor vehicle emission standards.⁷ A strikeout version of Chapter 173-423 WAC with the greenhouse gas provisions excluded from our proposed approval is included in the docket for this action.⁸ These exclusions are also noted in the table of regulations proposed for approval in section III. of this preamble.

⁶ See WSR 12-24-033 included in the docket.

⁷ See *National Ambient Air Quality Standards: Infrastructure State Implementation Plan for 2015 Ozone and 2010 Sulfur Dioxide*, Appendix B.

⁸ See 301_proposed IBR_Chapter 173-423 WAC_strike through.pdf

Lastly, as discussed in section I.E. of this preamble, Chapter 173-423 WAC does not include California's zero emission vehicle requirements.⁹

III. The EPA's Proposed Action

As previously noted, under section 177 of the CAA, states with CAA part D attainment or maintenance plans, such as Washington, are authorized to adopt California's standards in lieu of federal vehicle standards. Washington first adopted the California standards effective December 31, 2005; however, the state did not submit the LEV rules for approval in the SIP at the time. In 2019, Washington submitted the LEV rules to strengthen the SIP with respect to ozone control statewide, including current maintenance areas.¹⁰ We are proposing to approve Washington's request because it meets the requirements of section 177 of the CAA. Specifically, the EPA is proposing to approve and incorporate by reference into the Washington SIP at 40 CFR 52.2470(c), *Table 1 – Regulations Approved Statewide*, the regulations listed in the table below.

Washington Administrative Code, Chapter 173-423—Low Emission Vehicles

State citation	Title/subject	State effective date	Explanation
173-423-010	Purpose	12/29/12	
173-423-020	Applicability	12/31/05	
173-423-025	Effective Date	12/31/05	
173-423-030	Incorporation by Reference	12/31/05	
173-423-040	Definitions and Abbreviations	12/29/12	Except 173-423-040(3).
173-423-050	Requirement to Meet California Vehicle Emission Standards	12/29/12	Except 173-423-050(2)(g).
173-423-060	Exemptions	12/29/12	
173-423-070	Emission Standards, Warranty, Recall and Other California Provisions Adopted by Reference	1/27/19	Except the incorporation by reference of California code sections 1961.1 and 1961.3.
173-423-080	Fleet Average Nonmethane Organic Gas (NMOG) and NMOG Plus NO _x Exhaust	12/29/12	

⁹ On May 10, 2021, Ecology announced intent to start rulemaking to revise Chapter 173-423 WAC to include zero emission vehicles for passenger cars, light duty trucks, and medium duty vehicles; zero emission vehicles for medium and heavy duty trucks (Advanced Clean Trucks); and low emission vehicle requirements for medium duty vehicles.

¹⁰ See 102_state submittal_2018 ISIP for 2015 03 and 2010 S02 NAAQS included in the docket for this action.

	Emission Requirements, Reporting and Compliance.		
173-423-100	Manufacturer Delivery Reporting Requirements	12/29/12	
173-423-110	Warranty Requirements	12/29/12	
173-423-120	Recalls	12/29/12	
173-423-130	Surveillance	12/31/05	
173-423-140	Enforcement	12/31/05	
173-423-150	Severability	12/31/05	

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations shown in section III of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the

1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe, and other tribes located in Washington, in a letter dated July 15, 2019.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 12, 2021.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

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